

Internal Revenue Service
memorandum

TL-N-932-88

BHEARD CC:TL:TS

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to: District Counsel, San Jose W:SJ

from: Director, Tax Litigation Division CC:TL

subject: Consent ~~to~~ Extend One Year Assessment Period Under
I.R.C. § 6229(d)(2)

This responds to your request for technical advice of
October 26, 1987.

ISSUE

Whether the period for assessment under I.R.C. § 6229(a) can
be extended by consent of the parties after the conclusion of a
TEFRA proceeding.

CONCLUSION

The Service may be able to extend the period for assessment
under section 6229(a) by agreement at any time prior to the
expiration of the one year time period during which the period
for assessment is suspended under section 6229(d)(2) following
the conclusion of a TEFRA proceeding. Under I.R.C. §
6229(b)(1)(B) the tax matters partner may extend the period for
assessment for all partners. Under I.R.C. § 6229(b)(1)(A) a
partner may extend the period for assessment solely with respect
to his own partnership and affected items. We strongly recommend
against extending the period for assessment, however, unless
absolutely necessary since no court has yet addressed the
legality of such extensions, extensions will create tracking
problems, extend the length of proceedings, and possibly cause
other administrative problems.

If the necessity of an extension outweighs these
considerations, however, a modified Form 872-P should be used to
extend the period for assessing tax attributable to partnership
and affected items to a time certain. The form should be

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modified to explicitly refer to affected items (in addition to partnership items) since the extension will probably be for the purpose of an audit prior to the issuing of an affected item notice of deficiency.^{1/}

DISCUSSION

There are two periods for assessment applicable to partnership and affected items. I.R.C. § 6501 provides a three year period for assessing any tax imposed by the Internal Revenue title including tax attributable to partnership items and affected items. The three year period begins with the filing of "the return." Since Congress enacted section 6501 when partnership items and affected items were determined at the partner level "the return" in question is the return filed by a partner.

Section 6229(a) provides:

(a) General Rule.--Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of-

(1) the date on which the partnership return for such taxable year was filed, or

(2) the last day for filing such return for such year (determined without regard to extensions).

^{1/} If only a computational adjustment is contemplated an extension of the period for assessment should not be necessary.

The Service has the benefit of assessing under either section 6501 or under section 6229. The Service also has the benefit of extensions of either period, although an extension under section 6501(c)(4) will only be effective to extend the period for assessment if the agreement expressly provides that such agreement applies to tax attributable to partnership items. I.R.C. § 6229(b)(2). The Service should generally extend the period for assessment under section 6229 rather than 6501, however, since the partnership stay provisions do not apply to section 6501.

Statutory authority for extending the three year period for assessment under section 6229(a) is provided by section 6229(b)(1) as follows:

(b) Extension by Agreement.--

(1) In general.--the period described in subsection (a) (including an extension period under this subsection) may be extended--

(A) with respect to any partner,
by an agreement entered in to by
the Secretary and such partner, and

(B) with respect to all partners,
by an agreement entered into by the
Secretary and the tax matters
partner (or any other person
authorized by the partnership in
writing to enter into such an
agreement),

before the expiration of such period.
(emphasis supplied)

Thus, the Service may be able to extend the period for assessment under section 6229(a) at any time "before the expiration of such period," under section 6229(b)(1), including the time during which the period for assessment is statutorily suspended under section 6229(d).

Section 6229(d) provides:

(d) Suspension When Secretary Makes Administrative Adjustment.--If notice of a final partnership administrative adjustment with respect to any taxable year is mailed to the tax matters partner, the running of the period specified in subsection (a) (as modified by other provisions of this section) shall be suspended--

(1) for the period during which an action may be brought under section 6226 (and, if an action with respect to such administrative adjustment is brought during such period, until the decision of the court in such action becomes final), and

(2) for 1 year thereafter. (emphasis supplied)

Since the period for assessment will not expire before one year after the decision of a court in a partnership action becomes final, it is our position that the parties should be able to agree to extend the period for assessment under section 6229(a) before its expiration including during the one year period that the period for assessment is statutorily suspended under section 6229(d)(2). Until a court addresses this issue, however, this interpretation is not completely free from doubt.

An extension should not be made during any "tack on period" following the end of the one year suspension period, however. This is because the courts are split as to whether any tack on period exists under similar statutes. See Hoosac Mills Corp. v. Commissioner, 75 F.2d 462 (1st Cir. 1935) (notwithstanding "suspension" of section 6501 by stay provision no tack on period exists). Contra Ramirez v. United States, 538 F.2d 888 (Ct. Cl. 1976); Clark v. Commissioner, 90 T.C. No. 6 (Jan. 21, 1988); Thompson v. Commissioner, 84 T.C. 645, 648 (1985).


For example, the Service issues an FPAA with 30 days left on the original period for assessment under section 6229(a). The case is tried and the decision of the Court becomes final. The period for assessment is suspended under section 6229(d)(2) from the time the FPAA is issued until one year following the date the decision of the Court becomes final. At that point the 30 days which remained on the period for assessment at the time the period for assessment was suspended should begin to run and the period for assessment should not expire until one year and 30

days after the decision of the Court becomes final. See Thompson v. Commissioner, supra. However, since some courts will likely hold that the period for assessment expired at the end of the one year suspension period rather than 30 days later, any extension should be executed prior the the expiration of the one year suspension period rather than during the tack on period.

Please note that, if at any time partnership items are converted to nonpartnership items under I.R.C. § 6231(b), the period for assessment under section 6229(a) is no longer applicable and the Service will have one year to assess under I.R.C. § 6229(f). There is no provision in the code for extending the period under section 6229(f).

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